



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

September 29, 2004

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lynn C. Hart
Corporate Attorney
Sinclair Oil Corporation
550 S. Temple
Salt Lake City, UT 841300825

Re: Penalty Complaint and Notice of Opportunity
for Request a Hearing

Dear Mr. Hart:

Enclosed is an administrative complaint for violations of the Toxic Substances Control Act. I confirmed with Hank Ipsen of Holme Roberts and Owens that you were the proper party to receive service. Please read this complaint soon and carefully, since it describes your rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalty. Also enclosed is a copy of the Rules of Practice that govern these proceedings and, in case your company meets the criteria, an information sheet about the Small Business Regulatory Fairness Act.

You are required to take action in less than 30 days to avoid the possibility of having a default judgment entered against you that could impose the penalty amount proposed in the complaint. Having stated all the standard language, I note with disappointment from the file that this seems to be an ongoing problem this facility. This case even involves leaks from the same exact transformers of a few years ago. In light of this, my own personal view is that the proposed penalty in this matter is woefully low, but the region decided to go with this calculation. However, the judge is not restricted to our stated proposal and would be free to assess up to the statutory maximum. *Accordingly, I draw your attention to section 22.18(a) of the enclosed rules which allows a respondent to resolve the proceeding by paying the amount specified in the complaint within 30 days of receipt of the complaint.*

Although this matter is straightforward, feel free to contact me for further discussion or questions. I can be reached at 303.312.6917, or in writing at the address on the letterhead above.

Sincerely,

SIGNED

David J. Janik, Supervisory Attorney
Legal Enforcement Program

Enclosures



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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII**

Docket No. **TSCA-08-2004-0007**

IN THE MATTER OF:)	
)	
Sinclair Oil Corporation,)	COMPLAINT AND NOTICE OF
)	OPPORTUNITY FOR HEARING
Sinclair, Wyoming,)	
)	
Respondent.)	

GENERAL ALLEGATIONS

1. This is a civil administrative action filed under the authority granted to the Administrator of the United States Environmental Protection Agency (EPA) by section 16 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615, as properly delegated to the undersigned EPA officials. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (Rules)," 40 C.F.R. part 22. These general allegations apply to each count below.

2. Respondent is Sinclair Oil Corporation, a "person" within the meaning of 40 C.F.R. § 761.3, and thus subject to regulation.

3. Respondent was, at all times relevant to this action, the owner and operator of a facility in Sinclair, Wyoming.

4. On or about May 14, 2004, Kim P. Le, an authorized EPA inspector, conducted an inspection of the Sinclair facility, with the consent of Respondent, to determine compliance with TSCA and EPA regulations relating to polychlorinated biphenyls (PCBs), 40 C.F.R. part 761. Notices of inspection and confidentiality were issued to representatives of Respondent.

5. The EPA's PCB regulations define "disposal" of PCBs to include "spills, leaks, and other uncontrolled discharges of PCBs...." 40 C.F.R. § 761.3

6. The PCB regulations require that PCBs, as defined at 40 C.F.R. §761.3, be disposed of by the incineration or burial methods specified in the regulations. 40 C.F.R. §761.60.

COUNTS 1-2

7. In the area south of the number 521 tank, two transformers (GE, serial numbers 8684677 and 8684676)) were leaking fluid with PCB concentrations of over 50 parts per million (ppm).

8. Respondent's failure to properly dispose of the leaking PCBs described in the paragraph above, as required by 40 C.F.R. § 761.60, constitutes two violations of section 15 of TSCA, 15 U.S.C. § 2614.

COUNT 3-4

9. At or around the cooling tower, transformers #46 and 47 were both leaking fluid with a PCB concentration of over 50 ppm.

10. Respondent's failure to properly dispose of the leaking PCBs described in the paragraph above, as required by 40 C.F.R. § 761.60, constitutes two violations of section 15 of TSCA, 15 U.S.C. § 2614.
of over 50 ppm.

PROPOSED PENALTY

Section 16 of TSCA, 15 U.S.C. § 2615, and the regulations promulgated under section 6 of TSCA, 15 U.S.C. § 2605, as amended, authorize the assessment of a civil penalty of up to \$27,500 per day of violation for each violation of TSCA. EPA proposes the assessment of a

penalty of \$ 4,950 for the violations alleged above. In arriving at the amount of the proposed penalty, EPA, as required by section 16(a)(2)(B) of TSCA, 15 U.S.C.

§ 2615(a)(2)(b), has taken into consideration, to the extent known at this time, the nature, circumstances, extent, and gravity of the violation, and, with respect to respondent, the ability to pay, effect on ability to continue to do business, any history of prior violations, degree of culpability, and other matters as justice may require. EPA's approach with respect to the assessment of civil penalties is guided by its Polychlorinated Biphenyls (PCB) Penalty Policy, dated April 9, 1990 (copy enclosed) which provides a rational and consistent basis for applying the statutory factors to the circumstances of a specific situation.

NOTICE OF OPPORTUNITY FOR HEARING

This proceeding will be conducted pursuant to the Rules, 40 C.F.R. part 22, a copy of which is enclosed. Pursuant to the Rules, you have the right to request a hearing to contest any factual allegation set forth in the complaint and/or the appropriateness of the proposed penalty. If you wish to request a hearing, you must file a written answer to this complaint with the EPA Region VIII Hearing Clerk (8RC), 999 18th Street, Suite 500, Denver, Colorado 80202-2405, within 30 days of your receipt of the complaint.

IF YOU FAIL TO FILE A WRITTEN ANSWER WITHIN THE THIRTY DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED WITHOUT FURTHER PROCEEDINGS, PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT WILL IMPOSE THE UNADJUSTED PENALTY PROPOSED IN THE COMPLAINT.

SETTLEMENT CONFERENCE

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of informal conferences. Therefore, whether or not you request a hearing, you may confer informally with the agency about the facts, legal conclusions, or

penalty proposal set out above. The request for an informal conference does not stay the running of the twenty day time period for filing an answer and requesting a hearing. For questions or to explore the possibility of settlement, contact the attorney listed below.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION VIII,
Office of Enforcement, Compliance, and
Environmental Justice,
Complainant.

Date: September 28, 2004 By: SIGNED
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program (ENF-L)
999 18th Street
Denver, CO 80202
(303) 312-6917
Fax: (303) 312-6953

Date: Sept. 28, 2004 By: SIGNED
Martin Hestmark, Director
Technical Enforcement Program

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE
REGIONAL HEARING CLERK.**

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 29, 2004.